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Utah Supreme Court

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UNIVERSITY UTAH

IN THE SUPREME COURT

of the

STATE OF UTAH

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FILED

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WESTERN MACHINERY COM-
PANY, a Corporation,

Appellant, Supreme Court, Utah

vs.

H. R. RIDDLE and E. J.
MAYHEW,

No.

9513

9611

Respondent and Cross Appellant.

APPELLANT'S REPLY BRIEF

Appeal from the Judgment of the Third District Court for
Salt Lake County, Utah
HONORABLE STEWART M. HANSON, JUDGE

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IN THE SUPREME COURT
of the
STATE OF UTAH

WESTERN MACHINERY COM-
PANY, a Corporation, *Appellant,*

vs.

H. R. RIDDLE and E. J.
MAYHEW,

Respondent and Cross Appellant.

No.
9513

APPELLANT'S REPLY BRIEF

STATEMENT OF FACTS

The appellant and respondent and cross appellant have hereto filed their briefs and have set out their respective Statement of Facts which, except for the actual construction of the contract and the governing terms the parties are in substantial agreement. This brief will answer those portions of appellant's brief which we feel should be answered.

ARGUMENT

1. *The Contract was a Rental Contract.*

The Contract has a provision which was not deleted which the appellant claims governs. This provision is:

“This agreement is not to be construed as a sale contract or a conditional sales contract. The intent of this agreement is that the Lessor is hereby renting and/or leasing said property only. It is understood and agreed that said property shall remain personal property at all times, notwithstanding the manner of its annexation to real property.”

The appellant at no time treated the rental as a sales contract. The action commenced was not for an agreed purchase price but was for the rentals payable. If the intent of the parties had been that this was a contract of sale the above provision would have surely been stricken as were other provisions. It is the position of the appellant that because of the above quoted provision it would have been precluded from maintaining an action for the purchase price.

Section 15-1-2a, Chapter 24, Laws of Utah, 1953, defines a conditional sales contract under the laws of this State and the necessary requisites to be included in such contracts. There is a specific exclusion in the Chapter which removes this contract from the definition and the requirements contained in the Chapter.

“(7) The provisions of this Act shall not apply to sales as defined herein in which the cash price is greater than \$7,500.00 nor to the sale of

personal property as a component part of a contract for the sale of real property.”

We do not have, in this case, the circumstance usual in cases of conditional sales contracts. Here we have businessmen dealing in mining machinery and not the usual case where the Legislature has deemed it necessary to protect the general public from onerous finance contracts. A number of the cases cited in the annotations set forth in respondent's brief deal with situations where the courts have held that the so-called leases or rental agreements were entered into in an attempt to circumvent such statutes as Chapter 24 of the Laws of Utah, 1953. This is not the case at bar. There is no evidence that the contract entered into was not consummated at arm's length between business men.

The contract here under consideration was construed by the Supreme Court of Arizona in the case of *Oberman vs. Western Machinery Company*, 174, P. 2nd 745. In this case the plaintiff contended that the rental agreement was in fact a conditional sales contract. The Court at page 748 has the following to say relative to the provision of the contract cited above:

“ * * * The original lease was entitled “Rental Agreement;” parties are designated “Lessor” and “Lessee”; the agreement recites that the Lessor “rents and leases;” the terms were from month to month. The contract also specifically provided that the agreement was not to be construed as a sales contract or conditional sales contract. The avowed intent as specified in the contract was that “The intent of this agreement

is that the Lessor is hereby renting, and/or leasing the property only." In view of these simple explicit statements in the agreement we are at a loss to understand appellant's position that the agreement should be construed as a conditional sales contract."

The contention was made in the case of *Western Machinery Company vs. Graetz*, 108 P. 2nd 711, California Court of Appeals, that a rental contract similar to the one here under consideration was a conditional sales contract. The court held that the contract was a rental contract and did not fall within a statute requiring the recordation of conditional sales contracts.

2. The Appellant was under no Duty to Mitigate Damages.

The other point raised by respondents' brief which we deem necessary is on the question of mitigating damages. The case cited by the respondent, *Knudsen Music Company vs. Masterson*, 121 Utah, 252, 240 P. 2nd 973, does not hold that there is any duty on the part of an owner to immediately repossess to mitigate damages.

We have found no cases in this State or any other jurisdiction which places a duty or a burden on the Seller to repossess property promptly or at all to mitigate damages for which the Buyer may be liable.

There is a duty on the owner to obtain the best possible price for repossessed property to mitigate damages. There is absolutely no evidence in this case which

could be construed as showing a lack of diligence on the part of the appellant in disposing of the property nor that the price obtained was not the reasonable value of the property.

CONCLUSION

This contract was and was at all times treated by the Lessor as a rental contract. The amount of rent due is the proper measure of damages. The case should be remanded to the District Court to enter judgment for the appellant for the unpaid rental.

Respectfully submitted,

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